

10-20-03

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. AM100249)

In re Application of:)	Appln. No.: 10/039,383
)	Confirmation No.: 3951
HSIEN-JUE CHU <i>et al.</i>)	Customer No.: 25291
)	Group Art Unit: 1645
Filed: December 17, 2001 via 37 C.F.R. § 1.10)	Examiner: S. Devi
January 8, 2002 per date of receipt)	
)	
For: IMPROVED MYCOPLASMA)	
HYOPNEUMONIAE BACTERIN VACCINE)	

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
OCT 21 2003
OFFICE OF PETITIONS

TRANSMITTAL LETTER

Dear Sir:

Transmitted herewith in the above-referenced patent application is a Supplement to the Renewed Petition To Correct Filing Date Under 37 C.F.R. § 1.10(d) with attachments.

It is believed that no further fee is due. However, if the Office finds that a surcharge is warranted, the Commissioner is hereby authorized to charge any additional fees to Deposit Account No. 01-1425. A duplicate copy of this letter is provided for billing purposes.

Respectfully submitted,

WYETH

Date: October 16, 2003

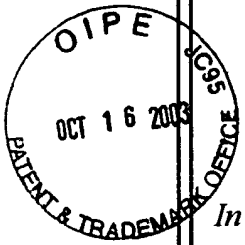
By: Anne M. Rosenblum
Anne M. Rosenblum
Attorney for Applicants
Registration No. 30,419

FILING BY EXPRESS MAIL UNDER 37 C.F.R. § 1.10

This correspondence is being deposited with the U.S. Postal Service on October 16, 2003 to be delivered by the "Express Mail Post Office to Addressee" service under Mailing Label Number EU730354403US addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Anne M. Rosenblum
Anne M. Rosenblum

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SUPPLEMENT TO THE RENEWED PETITION
TO CORRECT FILING DATE UNDER 37 C.F.R. § 1.10(d)

Dear Sir:

Applicants filed a timely Renewed Petition in connection with the above-referenced application on August 4, 2003. In addition to the evidence of record, Applicants respectfully request consideration of the supplemental proof being supplied herewith.

Pursuant to 37 C.F.R. § 1.10(d), Applicants have asked that the application be granted a filing date of December 17, 2001 and the Assignment (recorded on Reel/Frame Nos. 012484/0243) be given a recordation date of December 17, 2001.

On August 4, 2003, Mr. Robert Clarke in the Office of Patent Legal Administration had the opportunity to review the merits of the Petition of May 13, 2003 in kind assistance to the undersigned attorney and suggested to her that the Post Office evidence appeared to be weak. Although no one seems to know exactly what happened on December 17, 2001 to cause the mishandling of the Express Mail packages in the New Jersey Post Office, it is clear that the Washington, D.C. Post Office was still feeling the harmful effects of anthrax on December 18, 2001. In particular, staff at the Post Office facility in Washington, D.C. stated that they did not resume scanning Express Mailing labels into the computer records until February of 2002. Since it was expected that the U.S. Patent and Trademark Office would have known the negative impact that the anthrax contamination had on its mail, no formal statement had been initially entered into the Office

record. Immediately subsequent to the conversation of August 4, 2003 with Mr. Clarke, the undersigned attorney located and obtained a statement from the Postmaster of the Washington, D.C. Post Office to establish the horrific circumstances in December of 2001 for the record.

Attention is now respectfully drawn to the pertinent letter dated September 29, 2003 from the Washington, D.C. Postmaster (a true copy of which is attached hereto as "Exhibit F"). The Postmaster, Ms. Delores Killette, explains that the initial process of sanitation to eliminate the spread of anthrax rendered Express Mail barcodes unreadable when scanned. Hence, many Express Mail records were not made in December of 2001.

It is highly probable that the Express Mail packages deposited with the USPS on December 17, 2001 were adversely affected by the sanitation process upon receipt in the Washington, D.C. postal facility on December 18, 2001 and, as such, they were never recorded as having been received in the D.C. Post Office or delivered to the U.S. Patent and Trademark Office by Express Mail. The lack of evidence proving delivery by Express Mail was clearly the fault of the USPS, albeit as an inadvertent and unavoidable consequence due to the anthrax contamination.

Insofar as documentation of deposit on December 17, 2001 is concerned, the totality of facts and the affidavits of record show that the USPS mishandled Applicants' Express Mail package at the New Jersey Post Office. It cannot be ignored that the missing deposit receipt and the mishandling of this application was not an isolated case. Over five packages were mailed to the U.S. Patent and Trademark Office via Express Mail from three attorneys, using three different secretaries, on December 17, 2001. All packages displayed Express Mailing labels (see, for example in this case, the attached true copy of the Express Mailing Label Number EL 783017014 US identified as "Exhibit G"), which were not charged to the "Express Mail" Corporate Account. The Express Mailing labels were not entered in the Post Office records at the point of deposit and the receipts went astray. Through no fault of Applicants, the "date-in" on the "Express Mail" mailing label or the computer records were omitted twice by the USPS, first at the place of origin on the date of deposit (December 17, 2001) and then at the destination point on the guaranteed date of delivery (December 18, 2001).

Despite the fact that the Express Mailing labels cannot be found for direct proof of deposit, corroborating proof in compliance with the statutory prerequisite for relief under 37

C.F.R. § 1.10(d) is available to establish that, without any doubt, the package had been timely filed via Express Mail on December 17, 2001. The showing that December 17, 2001 was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup does not need actual proof from the USPS for relief to be granted under the statute. In fact, the showing can entail either proof from the USPS or, in the alternative, evidence that came into being within one business day of the deposit. The corroborating evidence in the form of the proffered Postcard Log that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS is equally important as USPS evidence and can substitute for direct USPS proof. Under the guidelines of M.P.E.P. § 513, a notation in a log book, entered after deposit by the person who deposited the correspondence as "Express Mail" within one business day of such deposit, is deemed an adequate showing of the date of deposit under 37 C.F.R. § 1.10(d)(3). Thus, the Postcard Log should be given full consideration to weigh in favor of Applicants.

The clear and convincing evidence proves the substantial likelihood that the application (and the Assignment) had been deposited with the USPS as Express Mail on December 17, 2001 and Applicants took reasonable care in the ordinary course of business to ensure that the filing of the application complied with the statute governing Express Mail.

Applicants pray that the Renewed Petition be considered in a favorable light and granted.

Respectfully submitted,

WYETH

Date: October 16, 2003

By: Anne M. Rosenblum
Anne M. Rosenblum
Attorney for Applicants
Registration No. 30,419

FILING BY EXPRESS MAIL UNDER 37 C.F.R. § 1.10

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Anne M. Rosenblum
Anne M. Rosenblum



September 29, 2003

Ms. Anne M. Rosenblum, Esq.
163 Delaware Avenue Suite 212
Delmar NY 12054

Dear Ms. Rosenblum:

This letter is in reference to your inquiry concerning mail that was processed during the month of December 2001.

The Washington, D.C. Post Office had a very serious situation with Anthrax starting in October 2001. Our plant was evacuated and shut down and is currently still closed. All mail that was inside the Washington, D.C. Plant had to be sanitized to eliminate the spread of Anthrax. Subsequently, all mail after that for Government agencies was also sanitized.

The method of sanitation was irradiation. The initial process caused mail to be scorched and possibly distorted. Many barcodes as used on Express Mail and other accountable mail could not be read when scanned, as a result, there may not be a record of delivery.

The Anthrax situation was a very unfortunate matter for the Postal Service and we regret any inconvenience it may have caused you.

If I can be of further assistance, please feel free to contact me on (301) 324-5810.

Sincerely,



Delores J. Gillette
Postmaster

Exhibit F



EL 783017014 US

**EXPRESS MAIL**

UNITED STATES POSTAL SERVICE®

**POST OFFICE
TO ADDRESSEE**

ORIGIN (POSTAL USE ONLY)			DELIVERY (POSTAL USE ONLY)		
PO ZIP Code	Day of Delivery <input type="checkbox"/> Next <input type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>	Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Date In Mo. Day Year	<input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Postage \$	Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Time In <input type="checkbox"/> AM <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee	Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Weight lbs. ozs.	Int'l Alpha Country Code	COD Fee Insurance Fee	<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only): Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.		
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials	Total Postage & Fees \$	NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday		
CUSTOMER USE ONLY			CUSTOMER SIGNATURE		
METHOD OF PAYMENT: Express Mail Corporate Acct. No. X079760			Federal Agency Acct. No. or Postal Service Acct. No.		
FROM: (PLEASE PRINT) PHONE ()			TO: (PLEASE PRINT) PHONE ()		
AMERICAN HOME PRODUCTS 5 GIRALDA FARMS MADISON NJ 07940-1021			Commissioner for Patents BOX PATENT APPLICATION Washington, D.C. 20231		
(AM100249) (Barbara Renda)					
PRESS HARD. You are making 3 copies. FOR PICKUP OR TRACKING CALL 1-800-222-1811 www.usps.com EMS					

Mailing Label
Label 11-F August 2000F02
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Exhibit G